

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 90 TO 104 of 2000

with

FIRST APPEALS No. 2103 TO 2117 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

SPL.LAQ OFFICER

Appearance:

1. First Appeals No. 90 to 104 of 2000
MR YN RAVANI for appellant
MS NANDINI JOSHI, AGP for Respondent No. 1
MR AJ PATEL for Respondent No. 2
2. First Appeals No.2103 to 2117 of 2000
MR AJ PATEL for the appellant
MS NANDINI JOSHI, AGP for respondent no.1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 17/10/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

All these appeals are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908. First Appeals No.90/2000 to 104/2000 are filed by the acquiring body after obtaining leave to appeal from the Court and in those appeals, the acquiring body challenges legality of common judgment and award dated October 20, 1999 rendered by the learned Civil Judge (S.D.), Surat in Land Reference Cases No.138/93, 182/90, 184/90 to 187/90, 189/90 to 193/90, 195/90, 196/90 and 137/93 to 139/93 by which the reference court has held that the claimants are entitled to compensation at the rate of Rs. 40/- per sq.mt. for their acquired lands. First Appeals No.2103/2000 to 2117/2000 are filed by the claimants for enhancement of compensation and their claim in the appeals is that they should be awarded compensation at the rate of Rs.52/- per sq.mt. We may state that the Land Acquisition Officer had made common award dated December 15, 1989 offering compensation to the claimants at the rate of Rs. 8.10 ps. per sq.mt. All the above-numbered Land Acquisition Cases were consolidated and Land Acquisition Case No. 138/93 was treated as main case, in which the parties had led common evidence. As common questions of facts and law arise for our consideration in these appeals, we propose to dispose them of by this common judgment.

2. A proposal was received by the State Government to acquire agricultural lands of village Lajpore, Taluka : Choryasi, District : Surat for the public purpose of housing scheme of Gujarat Housing Board. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Lajpore were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition

Act, 1894 ("the Act" for short) was issued, which was published in the Government Gazette on December 19, 1986. Thereafter those persons whose lands were sought to be acquired were served with notices and they had filed their objections against proposed acquisition. After considering their objections, Special Land Acquisition Officer, Gujarat Housing Board, Ahmedabad had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Lajpore, which were specified in the notification published under section 4(1) of the Act, were needed for the public purpose of housing scheme of Gujarat Housing Board. Therefore, declaration under section 6 of the Act was made, which was published in the Government Gazette on December 19, 1987. The interested persons were thereafter served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 70/- per sq.mt. In view of location of lands acquired, the Special Land Acquisition Officer was of the view that belting method was required to be adopted for determining compensation payable to the claimants. Having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 15, 1989, offered compensation to the claimants at the rate of Rs. 8/- per sq.mt. for those lands which were situated in interior and Rs.10/- per sq.mt. for those lands which were abutting on the road as well as Rs. 1/- per sq.mt. for Kharaba lands. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications under section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Surat, which were numbered as noted earlier. In the reference applications the claimants had claimed that the lands acquired were abutting on Surat Navsari Highway and as intensive development had taken place near the lands acquired, they were entitled to compensation at the rate of Rs.70/- per sq.mt. According to the claimants, the lands acquired were situated within the limits of Surat Urban Development Authority and in view of potential value, they were entitled to enhanced compensation as claimed in the reference applications.

3. The Special Land Acquisition Officer, Gujarat Housing Board, Ahmedabad had contested the reference

applications by filing written statement at Exh. 5 contending, inter-alia, that having regard to the location and disadvantage attached to the acquired lands, the claimants were not entitled to enhanced compensation. On behalf of the acquiring body, Executive Engineer, Housing Division, Surat had filed reply at Exh.26 controverting the averments made by the claimants in the reference applications. In this reply, it was inter-alia contended that Land Reference Cases No. 192, 193, 195 & 196 of 1990 were time-barred and were liable to be rejected. It was also mentioned in the reply that though the lands acquired were touching the Highway and were near the lands of Gujarat Industrial Estate, there was a creek between the lands acquired and lands of Gujarat Industrial Estate and, therefore, the claimants were not entitled to higher compensation than awarded by the Land Acquisition Officer.

4. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court at Exh.10. On behalf of the claimants, witness Sabbir Ismail Kasuji, who was claimant in Land Acquisition Cases No.138/93 and 191/90, was examined at Exh.38; whereas on behalf of the acquiring authorities witnesses (1) Bipinchandra Chhibabhai Patel was examined at Exh.66,(2) Kirtikumar Gokalchand Gupta, who was discharging duties as Talati in the Office of Special Land Acquisition Officer, was examined at Exh.74 and (3) Valamrai Ishwarbhai Gohil, who had retired from service and who at the relevant time was serving in the Office of Collector, was examined at Exh.98. In order to substantiate their claim for higher compensation, the claimants had produced previous awards of the reference court relating to the agricultural lands of village Kansad at Exhs.56 & 58 as well as order dated February 6, 1988 rendered by the learned Single Judge of the High Court in Company Application No.176/86. On appreciation of evidence led by the parties, the reference court held that Land Reference Cases No. 192, 193, 195 & 196 of 1990 were not time-barred. The reference court further deduced that the previous awards of the reference court relating to agricultural lands of village Kansad were comparable as well as relevant and the claimants were entitled to compensation on the basis of those previous awards. In the ultimate analysis, the reference court by the impugned common judgment and award has held that the claimants are entitled to compensation at the rate of Rs.40/- per sq.mt., which has given rise to the appeals by the acquiring body as well as the claimants.

5. We have heard the learned counsel for the parties

and taken into consideration the evidence - oral as well as documentary adduced by the parties before the reference court. The contention that Land Reference Cases No.192, 193, 195 & 196 of 1990 were time barred and, therefore, should have been rejected by the reference court, is devoid of merits. Witness Kirtikumar Gokalchand Gupta examined by the acquiring authorities at Exh.74, has stated that no Inward Register was maintained in the Office of Special Land Acquisition Officer to indicate as to on which date the reference applications submitted by the claimants were received in the Office. The witness in terms admitted during his cross-examination that he was not able to say anything as to whether the reference applications were submitted within time or not. Witness Valamrai I. Gohil examined by the acquiring authorities at Exh.98, clearly stated that he had made some endorsement in Land Acquisition Cases No.192/90, 193/90 & 196/90 as was made in Land Acquisition Case No.184/90. The witness in terms admitted in his cross-examination that the reference applications pertaining to Land Acquisition Cases No.192/90, 193/90, 195/90 & 196/90 were bearing the date of February 22, 1990 and were received on the same date. Moreover, Exh.99, which is a letter dated October 8, 1990/ October 12, 1990 addressed by the Special Land Acquisition Officer, Gujarat Housing Board, Ahmedabad to the learned District Judge, Surat, indicates that all the reference applications were forwarded to the District Court vide letter bearing No. LAQ/6-86/Vashi/621, dated April 20, 1990, but as reference applications were lacking in certain particulars, they were returned to Special Land Acquisition Officer, Ahmedabad for completing certain formalities. The record further indicates that after completing certain formalities, reference applications were sent back to the District Court, Surat and at that time, for the first time a stand was taken that references relating to Blocks no.180, 182, 184, 185 & 196 were time barred. Though two witnesses were examined on behalf of the acquiring authorities, letter dated April 20, 1990 along with which reference applications were forwarded to the District Court, Surat, was not produced before the court, for which an adverse inference will have to be drawn against the acquiring authorities. Having regard to the categorical admission made by witness Valamrai I. Gohil at Exh.98 that reference applications in connection with Land Acquisition Cases No.182/90, 184/90 to 187/90 and 192/90 to 196/90 dated February 22, 1990 were received within the period of limitation, the finding recorded by the reference court to the effect that Land Reference Cases No.192/90, 193/90, 195/90 & 196/90 were not time barred,

deserves to be upheld. The reference court has recorded cogent and convincing reasons for coming to the conclusion that Land Reference Cases No.192/90, 193/90, 195/90 & 196/90 were not time barred. Those reasons are to be found in Para-10 of the impugned judgment. The learned counsel for the acquiring body has failed to dislodge those reasons. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that there is no substance in the submission that Land Reference Cases No.192/90, 193/90, 195/90 & 196/90 were time-barred. The said contention is, therefore, rejected.

6. In these cases, the claimants have not relied upon sale instances or yield method for the purpose of claiming higher compensation. They have relied upon the previous awards relating to agricultural lands of village Kansad for substantiating their claim that they are entitled to compensation at the rate of Rs.52/- per sq.mt. It is well settled that the award rendered by the reference court in respect of similar land and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by Courts in previous case of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in vicinity in previous land acquisition proceedings can be treated as affording a good guide for determination of compensation to be awarded for lands acquired subsequently. In assessing the market value of a piece of land, the price paid in other transactions relating to land in the neighbourhood must be of some value. What its value should be has to be determined by the Court after considering all the evidence on which the previous award is founded. The awards given by the reference courts are atleast materials and may be in the nature of admission with regard to value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, rates founded in the said previous awards can be treated as reliable material to afford a basis to work upon for determination of the compensation on a later date. Having regard to these principles, we will now proceed to consider the question whether the previous awards produced by the claimants relating to lands of village Kansad, are relevant and comparable for the purpose of determining market value of the lands acquired in the present cases. Before considering the evindenciary value of the previous award, it would be

relevant to notice the location of the lands acquired. The oral evidence adduced by the parties as well as documentary evidence on record indicates that different lands of 29 Blocks of village Lajpore, admeasuring 22 Hectares 50 Are were acquired. Out of the acquired lands, Blocks No.196 & 162 were abutting on Surat Navsari State Highway; whereas rest of the lands had no direct access to the road though they were near the road. The evidence of witness Bipinchandra Chhibabhai Patel recorded at Exh.66 would indicate that few lands were level, but most of the lands acquired were uneven and in some of the lands acquired, there were 10 ft. deep pits. Except Block no.187, all the lands acquired were of old tenure and were on north of Gamtal of village Lajpore. The lands acquired had no irrigated facilities and though in Block No.162 there was a bore, it was not in working condition when award of Special Land Acquisition Officer was made. On west of the lands acquired, there is a creek where dirty water collects. The said creek is 15 ft. to 20 ft. deep and thereafter boundary of village Kansad begins. Surat city is at a distance of 14 Kms. from the acquired lands. The Extracts of Village Form 7/12 which are produced on the record of the case at Exhs.39 to 54 would indicate that in some lands, crop of juvar was being raised by the claimants and in rest of the lands grass was growing. In view of the special features, noted above, of the lands acquired, Court has to decide the question whether the previous awards relating to lands of village Kansad can ipso facto be made basis for determining compensation payable to the claimants. Exh.56 indicates that agricultural lands of village Kansad were acquired for the public purpose of construction of houses for slum clearance and redevelopment scheme pursuant to publication of notification under section 4(1) of the Act in the official gazette on July 9, 1981. The evidence of the claimants which was recorded in the said case indicated that the lands acquired were irrigated lands and highly fertile. As per the finding recorded in para-34 of the said judgment, the lands acquired from village Kansad had good potentiality and fertility as well as there was development in the nearby areas. In the said case, the claimants had also produced sale instances for claiming higher compensation and, therefore, in the ultimate analysis, the reference court by judgment dated November 29, 1988 had held that the claimants were entitled to compensation at the rate of Rs. 32/- per sq.mt. Exh.58 which is also a previous award of the reference court relating to lands of village Kansad indicates that agricultural lands from the said village were acquired for the public purpose of construction of houses for

Gujarat Housing Board pursuant to publication of notification under section 4(1) of the Act in the official gazette on June 11, 1981. Therein the Special Land Acquisition Officer had offered compensation to the claimants ranging between Rs.2.50 ps. to Rs. 2.70 ps. per sq.mt. and the reference court by judgment dated October 10, 1999 rendered in Land Reference Cases No.148/96 to 173/96 had held that the claimants were entitled to compensation at the rate of Rs. 25/- per sq.mt. less the amount awarded by the Special Land Acquisition Officer. This previous award also shows that the lands which were acquired were irrigated and highly fertile. The claimants in those cases were able to show that because of high fertility of the lands acquired, they were able to raise different crops. It is true that previous awards relating to adjacent lands cannot be ignored altogether while assessing value of lands situated near those lands, but it is well settled that an assessment of the compensation payable for land acquired must take into account several factors including nature of the land, its present use and its capacity for higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put and the impact of such use on the land acquired and so on. The location of the land acquired would show that a narrow strip of land with very small frontage compared to depth was acquired. Lower level of the lands acquired certainly requires the depressed portion to be filled up. The highest factor that contributes to the market value of an agricultural land is the irrigation facility its commands. The record of the case does not show that irrigation facility was available to the acquired lands. Though the claimants have produced certificate dated November 13, 1997 issued by Talati-cum-Mantri, Village Lajpore at Exh.17 to show that all agricultural lands of village Lajpore are irrigated lands, it does not appear to be a reliable piece of evidence because if irrigation facilities had been available to the claimants in these cases, they would have undertaken extensive cultivation of lands and raised different crops thereon. The evidence led by the claimants does not establish that intensive cultivation of lands acquired was undertaken. As observed earlier, the acquired lands and village Kansad are separated by a deep creek in which dirty water is collecting. Under the circumstances, we are of the opinion that the previous awards of the reference court relating to agricultural lands of village Kansad cannot ipso facto be made applicable for assessing market value of the lands acquired. However, the fact that several residential localities had come-up near the acquired lands is not in dispute. It is also not in dispute that

lands acquired were within the limits of Surat Urban Development Authority. Moreover, Surat city itself is not at a great distance from the acquired lands. Therefore, there is no manner of doubt that the lands acquired were possessed of potential value. Having regard to two previous awards relating to lands of village Kansad and potential value of the lands acquired, we are of the opinion that the claimants would not be entitled to compensation of more than Rs. 35/- per sq.mt.

The submission that in view of the order dated February 6, 1988 rendered by the learned Single Judge of this Court in Company Petition No. 176/86, the claimants are entitled to compensation at the rate of Rs.52/- per sq.mt. has no substance. The order passed by the learned Single Judge of this Court in Company Petition No.176/86 is on the record of the case at Exh.59. On perusal of the said order, it becomes evident that the court had directed the Court Committee to sell Survey Nos. 183 & 184 of village Kansad of Surat district at the price of Rs.60/- per sq.yd. in favour of Unique Group of Engineers which was applicant in the said application. In the order, size of the lands directed to be sold is not stated, nor location of those lands is mentioned. Moreover, the price indicated in the said order is as on February 6, 1988; whereas in the present cases, notification under section 4(1) of the Act was published in the Government Gazette on December 19, 1996. For all these reasons, the claimants, in our opinion, cannot be awarded higher compensation on the basis of order dated February 6, 1988 passed by the High Court in Company Application No.176/86, which is produced on the record of the case at Exh.59.

For the foregoing reasons, First Appeals No.90/2000 to 104/2000 filed by acquiring body are partly allowed. It is held that the claimants are entitled to compensation for their acquired lands at the rate of Rs.35/- per sq.mt. Rest of the directions given in the impugned common award are not disturbed and are hereby upheld. First Appeals No.2103 to 2117 of 2000 filed by the claimants are dismissed. There shall be no orders as to costs in the appeals. Office is directed to draw decree in terms of this judgment.

(J.M.Panchal,J.)

(M.C.Patel, J.)

(patel)